

March 3, 2020

By ECFHon. Peggy Kuo  
United States District Court  
225 Cadman Plaza East  
Brooklyn, NY 11201Re: *Dawson v. Merck*, No.: 1:12-cv-01876 (BMC)(PK)

Dear Magistrate Judge Kuo:

We write in response to Mr. Morrow's letter to this Court, *see* ECF No. 128. First, we note that Defendants do not oppose our request that Dan Levine, a Reuters reporter, be granted permission to listen to the March 26 hearing telephonically. The hearing is open to the public, and no party has articulated any reason why Mr. Levine should not be permitted to dial-in. Reuters, therefore, respectfully requests that Mr. Levine be granted such permission.

Second, although Defendants do not oppose Mr. Levine's participation at the hearing, Mr. Morrow incorrectly suggests that Mr. Levine may only report on the hearing if Defendants "consent." But Mr. Morrow's "consent" is irrelevant, and his suggestion that Mr. Levine—as a member of the media and the public—could be barred from reporting on the contents of an open hearing would be an unconstitutional prior restraint. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) ("[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975) ("Public records by their very nature are of interest to those concerned with the administration of government . . . The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business."). While we do not understand Mr. Morrow to be requesting such a prior restraint, none is remotely warranted here.

Respectfully,

Davis Wright Tremaine LLP



Katherine M. Bolger